UN

UNITED NATIONS **E**

Economic and Social Council

Distr.
GENERAL

E/CN.4/Sub.2/1995/SR.28
28 August 1995

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

Forty-seventh session

SUMMARY RECORD OF THE 28th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 21 August 1995, at 10 a.m.

Chairman: Mr. MAXIM

later: Mr. HAKIM

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(a) QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY;

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The meeting was called to order at 10.10 a.m.

INTERNATIONAL PEACE AND SECURITY AS AN ESSENTIAL CONDITION FOR THE ENJOYMENT OF HUMAN RIGHTS, ABOVE ALL THE RIGHT TO LIFE (agenda item 13) (continued)

1. Mr. FAN Guoxiang said that the maintenance of international peace and security was an essential basis for the promotion and protection of human rights. Wars, occupation, colonial rule, internal armed conflicts resulting from radical political changes and ethnic hatred would only bring about genocide and other massive violations.

2. Nuclear tests or nuclear disarmament had an impact on human rights, especially the right to life. The entire world was deeply concerned over the possible use of weapons of mass destruction, in particular nuclear weapons, and all peoples wanted prompt nuclear disarmament. How was a nuclear-free world to be achieved, given the enormous existing arsenals? The best solution would be a binding treaty that completely banned all nuclear weapons, with effective international verification, similar to the recent Convention on the Prohibition of Chemical Weapons. Such a new treaty would differ from the Non-Proliferation Treaty in that it would admit of no exceptions. The negotiations might take some time, but in the meantime the nuclear-weapon States and the potential nuclear-weapon States had to demonstrate a resolute political will to abandon the policy of nuclear deterrence. They should do so in a legally-binding document, not simply a political declaration, undertaking not to use nuclear weapons against any non-nuclear-weapon State and in any nuclear-free zone. He saw no reason why a convention on the complete prohibition and total destruction of all nuclear weapons could not be concluded promptly; and why the nuclear-weapon States could not immediately sign a treaty of non-use and non-first-use of nuclear weapons.

3. The scenario in the nuclear area was complicated: there were nuclear-weapon States - two major Powers that had conducted hundreds of nuclear tests, two medium ones that conducted testing in regions far from their homeland, a small one and three newly independent ones; there were potential nuclear-weapon States - the "threshold States" in different parts of the world and a few highly industrialized States with nuclear capability; and there were non-nuclear-weapon States, some of whom, however, were members of military alliances affording them the nuclear protection of the major Powers. It would be a grandiose task to strike a balance between supreme national security interests, an effective and prompt international solution, and the survival of mankind. In seeking to achieve the conditions for world peace and the enjoyment of the right to life, health and security, the primary danger - the existing nuclear arsenals - must not be forgotten in the focus on nuclear testing.

4. With regard to the preservation of the environment, nuclear pollution had begun in the 1940s and nuclear testing reached its peak in the 1960s and 1970s. The Commission and the Sub-Commission had not taken any action at the time, the reason probably being the division of labour within the United Nations system. The Conference on Disarmament was currently negotiating a comprehensive nuclear-test-ban treaty which would be completed in 1996, and any involvement in disarmament matters by the Sub-Commission would complicate rather than facilitate those negotiations.

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES:

(a) QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY;

(b) INDIVIDUALIZATION OF PROSECUTION AND PENALTIES, AND REPERCUSSIONS OF VIOLATIONS OF HUMAN RIGHTS ON FAMILIES;

(c) APPLICATION OF INTERNATIONAL STANDARDS CONCERNING HUMAN RIGHTS OF DETAINED JUVENILES;

(d) INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY, JURORS AND ASSESSORS AND THE INDEPENDENCE OF LAWYERS.

(agenda item 10) (E/CN.4/Sub.2/1995/17 and Add.1-2, 18-21; E/CN.4/Sub.2/1995/26-E/CN.4/1996/5; E/CN.4/Sub.2/1993/6; E/CN.4/Sub.2/1995/NGO/4, 8, 24 and 37; E/CN.4/1995/39 and 100)

5. Mr. YIMER congratulated both Special Rapporteurs on the excellent reports they had prepared pursuant to Sub-Commission resolution 1994/34: Mr. Joinet for his progress report on the question of the impunity of perpetrators of violations of civil and political rights (E/CN.4/Sub.2/1995/18) and Mr. Guissé for his interim report on opposition to the impunity of perpetrators of violations of economic, social and cultural rights (E/CN.4/Sub.2/1995/19).

6. Mr. Joinet's study was properly succinct, yet brought out many salient points regarding impunity from the aspect of civil and political rights. Impunity was currently the newest word in the human rights lexicon, and Part I of the report dealt with the definition of the term and the close nexus with the question of reparations, and made strong arguments for extending the study to include perpetrators other than the State or its agents. The new notion of "relative" impunity advanced in Part III.A of the report was also an interesting one, but required caution because it risked lessening the rigour of the very concept of impunity. Other points worth studying were a possible comparison of the experience acquired by extrajudicial fact-finding commissions (Part III.C), although their investigations should never replace the judicial system; the role of military and other special courts (Part III.D); and the human rights aspect of purges (Part III.G). By far the most important issue, however, was the principle of due obedience and mitigating circumstances (Part III.E), which had been rejected at Nürnberg as a consideration in war crimes. The Special Rapporteur should deal with the basic question of moral choice, in cases when obedience was not justified and mitigation was not automatic. Amnesty (Part III.F) of course was another very important issue and needed deeper study. While always a prerogative of a sovereign State, amnesty inevitably raised the problem of impunity.

7. Mr. Guissé's study brought up a number of interesting questions to be explored. Impunity seen from the vantage point of economic, social and cultural rights was a recent concept, and his report had made a good beginning. However, he himself believed that such a study had nothing to do with the administration of justice or the question of punishment, and therefore did not belong under item 10. Impunity in the context Mr. Guissé was dealing with had to do with compensation and reparation, and should henceforth properly be studied under agenda item 8.

8. Ms. AULA (Pax Christi International) observed that recourse to amnesty laws was a perverse mechanism that contributed to the worldwide problem of impunity. Under the guise of a pseudo-legality, it perverted the very essence of the rule of law. The law guaranteeing total impunity adopted in June 1995 in Peru was a case in point, since it sacrificed human rights in the name of a supposed national reconciliation. The Sub-Commission could not remain silent when such laws were promulgated, for the acceptance of impunity was tantamount to denying its own raison d'être.

9. Similarly, Pax Christi denounced the fact that in Rwanda, those who had masterminded and instigated the genocide were all safely out of reach of the proceedings of the International Tribunal for Rwanda, while their armed wing continued to sow fear and hatred in the refugee camps. Moreover, a second tragedy was taking place within the country, where persons detained in the prisons, awaiting a very hypothetical trial, were kept in intolerable conditions of overcrowding and privation. Among the presumed 40,000 such prisoners there were innocent people, falsely denounced by those who had appropriated their property. There could be no reconciliation in Rwanda, or in Burundi, unless justice was done and the rule of law was re-established. One of the necessary conditions was to put the armed forces at the service of a democratic State and not an ethnic oligarchy.

10. Regarding the human rights of detained juveniles, Bengali security forces in Bangladesh continued to persecute Jumma students in the Chittagong Hill Tracts. Pax Christi, endorsing the April 1995 Amnesty International report, also appealed to the Chinese authorities to release immediately and unconditionally nine Tibetan sisters under the age of 25 who had been in prison since 1993 for having peacefully exercised their freedom of expression. In addition, while Morocco was to be commended for the progress it had made in human rights, the treatment of Saharans remained a problem: during a peaceful demonstration in May in El Aaiun, dozens of young Saharans were imprisoned, and the eight who had been brought to trial had been judged by a special military tribunal, their sentences having been reduced to one year only after strong international pressure.

11. Regarding the individualization of prosecution and penalties, Pax Christi drew attention to the situation in Kosovo, where the Serbian police were mistreating many Albanians in their homes, often taking family members hostage until persons they were searching for were handed over. A Pax Christi mission had also witnessed many irregularities in the course of trials of Albanians who had been brought to court on the basis solely of statements they had been forced to sign after torture by the secret police and who had been denied the presence of counsel during interrogations.

12. Once again the case of East Timor must be mentioned, especially with regard to the prison conditions and the trial of the leader of the Timorese resistance. The administration of justice in Indonesia itself, moreover, was deplorable and it was common practice to imprison civilians for political reasons.

13. In addition, Pax Christi wished to recall a forgotten case, that of the Lebanese imprisoned since 1984 by the Israelis in the Al-Khyam camp in southern Lebanon, to which Israel had thus far denied access by the

International Committee of the Red Cross. The Sub-Commission should draw attention to the matter and demand the prisoners' release after such a long and inhuman detention.

14. Ms. LACROIX (World Organization Against Torture) said that the Sub-Commission must make a concerted effort to put forward new proposals for more effective and credible action in defence of human rights by the Organization, which of late had so disillusioned world opinion. If human rights could be constantly flouted, despite the remarkable advances made in establishing complex normative and institutional machinery in the field, it was because the perpetrators of violations knew they enjoyed unlimited impunity. As the recent courageous and very public resignations of Mr. Felber and Mr. Mazowiecki had underscored, the United Nations had thus far been satisfied to limit its mandate to ascertaining the commission of atrocities, arguing that only States had the power to bring perpetrators to justice and restore the rights of victims. The fact that many Governments made no move to act on reports, resolutions and decisions regarding their countries only encouraged the human rights violators in their sinister activities.

15. The Sub-Commission must give priority to the question of impunity, study its various forms and make specific proposals for imposing punishments proportionate to the crimes. The situation in the former Yugoslavia highlighted the ambiguity of the United Nations role there. Even now when the International Tibunal had finally branded as war criminals those responsible for the atrocities, the narrowness of the Secretary-General's mandate left him no other option but to call on all the parties - the victims and their officially incriminated murderers - to continue negotiating. The United Nations peace mission was discredited by such a contradictory stance, made all the worse by the fact that the whole point of transferring jurisdiction over the most serious crimes to an international court had been precisely to obviate impunity. Both in the former Yugoslavia and in Rwanda, where the victims of the genocide were in the hundreds of thousands, it had to be said that the International Tribunals had no means of achieving that ambition, and certainly that the States which had set them up were not backing them.

16. Unfortunately, national remedies against serious human rights violations were often hardly more effective. In Sri Lanka, over 3,000 prisoners thus far tallied by a member organization, Home For Human Rights, had between 1988 and 1995 disappeared after being arrested. That list of names and the habeas corpus motions brought should have made it possible to punish those responsible. Yet to date not one person had even been charged.

17. In Latin America, the security forces or the army in Colombia, Guatemala and Mexico operated with flagrant impunity, often legalized by amnesties supposedly intended to bring about national reconciliation. The Sub-Commission must also speak out against the amnesty laws just passed in Peru, for they set a dangerous precedent that sapped the foundations of human rights.

18. The problem of impunity raised the question of punishment. By giving the Security Council sole power to impose sanctions and decide what form they should take, the United Nations had from the start encouraged measures of a

political nature and deliberately forgone the establishment of an international judicial mechanism. The situation had considerably changed, however, since the 1940s, and it was time to devise an equitable global system for judging human rights offenders, no matter how highly placed they might be. It was no longer possible to pass on to national bodies the responsibility of declaring and implementing sanctions; nor was it possible to multiply the ad hoc international criminal tribunals.

19. New international instruments were needed, and drawing them up could be the Sub-Commission's main task in coming years. If the United Nations did not equip itself with the machinery for impartially judging the most serious human rights violations and guaranteeing the application of sanctions despite the ill will or the helplessness of certain Governments, all the legislative and monitoring efforts of the last few decades could be wasted for lack of credibility.

20. Mr. GILANI (World Society of Victimology (WSV)) condemned the hostage-taking in Kashmir, whether in the name of a just cause or at the behest of State machinery to discredit a cause, and deplored the recent death of a Norwegian hostage. The standard of the administration of justice was the barometer of a civil society. One had to question the judicial standards in Kashmir when a judge of the Superior Court denounced the fact that his tribunal had been rendered helpless by the failure of law enforcement agencies to act, and when another accused the State of interpreting and implementing court instructions in such a way as to endanger the institution of the judiciary and the rule of law. The murderous Indian State machinery had not only disabled the judiciary in Kashmir, but had, with its continuing military repression, undermined the social and political system as well. Twenty thousand innocent men, women and children had reportedly been killed, often after torture, since 1989. Forty-seven thousand detainees of all ages languished in prison in remote parts of India, where maltreatment and limited family access and the prohibitive cost of litigation were a serious impediment to fair trials. The report by the Special Rapporteur on extrajudicial, summary or arbitrary executions (E/CN.4/1994/7) had confirmed large numbers of killings in custody by security forces and police. The Sub-Commission should consider whether the detainees in Kashmir enjoyed an effective right of access to the courts, in view of the long list of breaches and deprivations. The thousands in detention, if they were alive, were in urgent need of help. The Sub-Commission had to stand firm for universal imperatives of justice in all situations, but the more so in situations such as those in Kashmir and the former Yugoslavia, where the need was desperate.

21. Ms. PARKER (International Educational Development, Inc.) said that her organization, IED, was affiliated with the Coordinating Office of Non-Governmental Organizations Working for Peace (CONPAZ) in Chiapas, Mexico, the Mexican Commission for Rights and the Promotion of Human Rights, the Diocese of San Cristobal de las Casas and the National Human Rights Network of the state of Guerrero, Mexico.

22. The Mexican Commission had reported the cases of 17 peasants assassinated on 28 June 1995 in Guerrero and of 2 peasant organizers killed there on 15 July 1995. The Government had tried to convince the Mexican public that the June massacre was "accidental". The Mexican Commission had asked for an

impartial and independent investigation into the events by the Supreme Court, invoking article 97 of the Constitution on the grounds of extreme violence on the part of the Government. The Mexican Commission had also denounced the arrest of the mayor of one of the towns, who had documented evidence of a dirty war against the political opposition; as well as threats against a local Jesuit priest. An independent review of those incidents by the governmental National Human Rights Commission had concluded that officials of the Guerrero state government had participated in the June killings, and the Commission had recommended the suspension of several as well as criminal action against others. According to established procedures, the Guerrero governor had 15 days to act on the recommendations and provide any additional evidence. The Mexican human rights groups and IED wished to present that information to the Sub-Commission because of the great fear the Mexican authorities would not comply, thus raising the spectre of impunity. IED had also taken the testimony of one of three priests deported by the Mexican Government in June. Information from CONPAZ from the conflict zones in Chiapas indicated that negotiations between the guerrilla rebels and the Federal Government had taken place from 24 to 27 July. At that point, entire villages were under detention or constant surveillance.

23. IED also wished to report on the case of a member of the Indonesian Parliament who, during a State visit by the Indonesian President to Germany, had stated in conferences he gave in a number of German universities that Indonesian economic growth had fallen short of expectations in several areas. For that, the member of Parliament had been accused of fomenting anti-Indonesian opinion in violation of article 34 of the Criminal Code and later been summoned by the police on the grounds of a crime against the President's prestige, which was a violation of human rights under all relevant international instruments.

24. In Kosovo, moreover, since 1990, over 300 judges, district attorneys, public defenders and magistrates, all of Albanian ethnicity, had been summarily discharged. Although over 80 per cent of the people of Kosovo were ethnic Albanians, there was currently not one Albanian head of any district court or municipal court nor one supervising district attorney. In addition, Kosovo had been under a more or less permanent state of emergency since 1990, which violated article 4 of the International Covenant on Civil and Political Rights, if one applied the terms of analysis set out in the Questiaux report (E/CN.4/Sub.2/1982/15), a document still as useful now as any other document before the Sub-Commission.

25. The CHAIRMAN said that he wished to remind speakers that their statements should be relevant only to agenda item 10.

26. Mr. BHAN (International Institute for Non-Aligned Studies) said that the rule of law was an essential safeguard of the human rights of individuals. It was ironic that the administration of justice, instead of protecting fundamental rights, should increasingly lead to a denial of them. A major contributory factor had been the alarming proliferation in certain countries of special laws and special courts.

27. The Sub-Commission in its resolution 1994/33 had shown a keen interest in the report of the Secretary-General (E/CN.4/Sub.2/1994/7 and Add.) highlighting the Principles and Guidelines for the Administration of Justice and Human Rights of Detainees. His organization appreciated the efforts of the Sub-Commission in that regard and urged all United Nations Member States to comply with the proposed principles and guidelines.

28. In some countries in southern Asia and elsewhere, the problem continued to grow, and the torture of political prisoners and extrajudicial executions were commonplace. In some countries, particularly those where the law discriminated against citizens on grounds of religion, special courts had been established which violated the right of equality. In some countries, remand procedures and the denial of bail violated international standards. The principle of presumption of innocence had been widely abandoned. Other widespread abuses included the practice of arbitrary arrest and detention without charge or trial, mass arrests ostensibly to round up suspected terrorists, and the detention and torture of civilians by some State security forces with impunity. Victims of such abuses were generally denied any right of reparation, in contravention of international law.

29. His organization urged the international community to devote particular attention to cases where States had been transformed from protectors of rights to gross perpetrators of inhumanitarian standards, particularly norms relating to laws of special courts, administration and human rights of detainees.

30. Mr. CHOEPHEL (International Association of Educators for World Peace (IAEWP)) said that the rights which the Sub-Commission discussed under agenda item 10 were being systematically violated by a growing number of Governments, democratic as well as totalitarian, who used laws as tools for the suppression of political dissent or for the imprisonment of political opponents. Two prominent examples were those of Ken Saro-Wiwa, the Ogoni leader, who had been held in prolonged detention by the Nigerian Government, and Wei Jingsheng, one of the most prominent political prisoners in China. The situation of such individuals became even more hopeless when the State enacted laws specifically to deny their citizens justice from the judiciary which was supposed to protect them.

31. Nevertheless, international human rights mechanisms gave some grounds for renewed hope with regard to protecting the rights of detainees, encouraging the application of international standards relating to the detention of juveniles, promoting the independence and impartiality of judges, jurors and assessors and enhancing the independence of lawyers.

32. In Tibet, trials were no more than a formality, the guilt of the accused being determined by Communist Party officials during the investigation and interrogation process. Tibetans who had been arrested were presumed guilty and denied any opportunity to prove their innocence before an independent and impartial tribunal. Judges and lawyers were trained to adhere to the Party line, which meant labelling all Tibetan activists as "separatists" conducting "crimes against the State". The independence and impartiality of the judiciary and the legal profession was therefore purely theoretical.

33. According to an article in the Hong Kong newspaper, Eastern Express, the Chinese Government had misled the United Nations Working Group on Arbitrary Detention in its response to communications from Geneva. The article alleged that Gyaltsen Dolkar, a Tibetan nun, had been sentenced in 1990 to four years in prison for "crimes of counter-revolutionary propaganda" by Lhasa's Intermediate Court. Her sentence had been increased to 12 years on 8 October 1993 for singing songs supporting Tibetan independence at Drapchi prison. In May 1994, however, the Chinese Government had reported her case to the United Nations as a "subversive" crime, making no mention of the original sentence for the crime of "counter-revolutionary propaganda" or the extension of her sentence. "Subversion" was a separate crime under article 92 of China's Criminal Law and was punishable by death or a minimum of 10 years in prison.

34. His organization was also deeply concerned about the arbitrary detention of Mr. Harry Wu and called for his immediate release. In a statement made in exercise of the right of reply to the testimony given by Mr. Wu at the fifty-first session of the Commission on Human Rights, the Chinese delegation had described Mr. Wu as a person "living by rumour-mongering" and had attempted to undermine his credibility by saying that while he had claimed to have visited 50 prisons, he had in fact not visited one. The Chinese Government now contended that Mr. Wu had made previous visits to China and were even releasing details to support their trumped-up charges against him. The cases of Gyaltsen Dolkar and Harry Wu showed how the human rights of detainees or the proper administration of justice could be so easily sacrificed to serve the political objectives of a Government which hoped to avoid international condemnation over certain cases of detention.

35. He noted that China had ratified the Convention on the Rights of the Child on 2 March 1992. Nevertheless, the treatment of juvenile detainees in Tibet violated both Chinese law and the Convention and other international instruments. There had been reports of ill-treatment of juvenile detainees in Tibet in detention, and that some had been subjected to conditions which might amount to cruel or degrading treatment. Sherab Ngawang, a child nun of 15 who had been imprisoned at the age of 12, had died recently following her release from prison on 15 May. She was one of the youngest political prisoners in Tibet to have died as a result of prison ill-treatment since 1987. No information had been given by the Chinese authorities concerning her death.

36. In conclusion, his organization urged the Chinese Government to honour its commitments to observe the Convention on the Rights of the Child and the Convention Against Torture and to provide juveniles and other detainees in Tibet with the full protection of the law, including the right to be presumed innocent until proven guilty, to due process of law and the right not to be subjected to torture or cruel, inhuman or degrading treatment.

37. Mr. WAREHAM (International Association Against Torture) said that the administration of justice and the human rights of detainees was one of the key issues addressed by the Sub-Commission and at the very heart of any guarantee of civil and political rights. It was therefore particularly instructive, when determining the progress made in that area, to examine the practices of countries held up as models of democracy.

38. The case of Mumia Abu Jamal was symptomatic of many of the human rights violations which afflicted the United States justice system - racism in the judiciary, the absence of a fair trial, the discriminatory application of the death penalty and indeed the retention of the death penalty itself, the incarceration of political prisoners. Although Mumia Abu Jamal's execution had been postponed in the face of overwhelming national and international condemnation, the very fairness of his trial remained at issue.

39. Mumia Abu Jamal's situation was but one example of an escalating assault in the United States on the human rights of detainees. The growing number and varied forms of prisons now being developed, and some of the effects of privatization, constituted highly developed and sophisticated forms of contemporary torture. Many of the first inmates of the new facilities were representatives of various ethnic communities who were subjected to illegal surveillance, prosecution and incarceration for their political acts. They included activists such as Dr. Mutulu Shakur, Oscar Lopez Rivera, Raymond Luc Levasseur and Tommy Manning, who were all incarcerated in the new top security prison at Florence in the State of Colorado. The new prison was a development of the model established by California's infamous Pelican Bay State prison, which in January 1995 had been condemned by a Federal District Court Judge for the prevalence of abuses such as assaults on prisoners by guards with batons, high voltage taser guns and rubber bullets, the chaining of prisoners in "foetal restraints" and the practice of locking up prisoners for more than 22 hours at a time with almost nothing to do. The judge had found that the prison administration permitted the use of force for the purpose of punishment and deterrence and that conditions in the unit might well hover on the edge of what was humanly tolerable. The prison represented state-of-the-art technology and procedure in the use of "sensory deprivation" to break the spirits of inmates. The intention was to reduce inmates to a sub-human state of total dependence. Twenty-five other states had already followed the Government's lead and converted prisons into maximum security units, while similar plans had been announced by another six states. The United States now had 5 million people in prison, on probation or on parole. That figure did not include the 500,000 people in local jails. The growing number of inmates and longer sentences, combined with the reduction in or total elimination of recreational and educational activities, would result almost inevitably in organized or spontaneous inmate uprisings. They in turn would lead to greater repression and a seemingly endless spiral of escalating violence.

40. With regard to the Republic of Korea (South Korea) his organization had intervened three years previously when that country had refused to repeal its draconian National Security Law and refused to repatriate Mr. Li In Mo to his family in the Democratic People's Republic of Korea (North Korea). Mr. Li had been held for nearly 40 years in South Korean prisons for refusing to recant his political views. Although the South Korean Government had finally caved in to national and international pressure and repatriated Mr. Li two years ago, it had still stubbornly refused to do so with three other prisoners of war from the North, Kim In So, Ham Se Wan and Kim Young Tae. All three were nearly 70 years of age, in failing health and anxious to return to their homeland. They were kept under constant surveillance. The effects of the forced separation were felt acutely by the men's families, as well as the men themselves. An AICT fact-finding delegation had recently met with the sister

and two daughters of Mr. Kim. Until two years ago, they had not known whether he was dead or alive. They now knew that he was alive but could not return home. The devastation caused by this situation on the women was obvious.

41. Such human rights violations were not confined to North Korean nationals. Under the National Security Law, the abuses also were directed at South Korean citizens, especially those who wished to achieve the reunification of the Korean peninsula. Many had been imprisoned and tortured.

42. Ms. KELLER (International League for Human Rights) said that her organization was concerned about widespread and frequent State violations of the administration of justice and the human rights of detainees. It considered that the international community must energetically pursue and remedy breaches of those fundamental human rights. In view of time constraints, it would focus on three nations.

43. In Myanmar (Burma), despite the release of Aung San Suu Kyi, an estimated 1,000 political prisoners remained in Burmese prisons. They included members of parliament elected during the 1990 elections, most of them associated with the National League for Democracy party (NLD), who had been charged with treason against the State. The State Law and Order Restoration Council (SLORC) continued its systematic abuse of human rights by illegally detaining citizens for their political beliefs. They included a number of students arrested in February 1995 for singing a pro-democracy anthem at the funeral of former prime minister U Nu. Nine of those arrested had been sentenced to seven years in prison. Unlike Aung San Suu Kyi, most political prisoners did not receive the attention of the international press and SLORC had been unwilling to allow international human rights observers to see them. Their plight therefore remained unmonitored.

44. The Government of the Peoples Republic of China also regularly detained citizens for their political beliefs and activities. In May 1995, to cite the most recent example, over 70 human rights activists had been arrested after calling on the Government to reform legal procedures and improve protection of human rights. Five of the activists remained in detention and had not been given access to defence lawyers or normal legal remedies. Although China's Criminal Procedure Law provided for detainees to have access to lawyers no later than one a week before their trial, that minimal protection was not always observed. Prisoners could not normally call witnesses for the defence or question witnesses against them. In politically sensitive cases, lawyers might enter a plea of not guilty only with the permission of the judicial administration. Appeals, even in death penalty cases, were usually cursory, the defendants being given only a few days to prepare.

45. Once convicted, prisoners rarely received sentences commensurate with the alleged crime. For example, three political activists who had been sentenced in 1994 for "counter-revolutionary crimes" involving the distribution of leaflets, the drafting of documents and discussing the organization of various underground political associations, had been sentenced to terms of 15, 17 and 20 years' imprisonment respectively. In some cases, the authorities dispensed with a legal process altogether and relied instead on administrative procedures to detain hundreds of thousands of Chinese and Tibetans every year.

Citizens thus detained were then deprived of even the limited rights offered by the Chinese legal system, and individuals sentenced by the police under administrative procedures were not charged or brought before a judge.

46. Turning to Nigeria, she noted that the rights of citizens in that country were violated through the repressive tactics employed by the current military Government and in particular through the politically motivated detentions and extrajudicial executions which it sanctioned. The Nigerian Government relied on military raids to crush local protest movements, especially those fighting for indigenous rights. Systematic crackdowns in Ogoniland, for example, had included punitive raids on villages where security forces had indiscriminately shot protestors, raped women and arrested community leaders without charge or trial. Following the 1994 murders of four prominent Ogoni leaders, at least 590 Ogonis had been executed extrajudicially by the military. Targeting citizens for their political and cultural positions and Government sponsored raids constituted egregious abuses which directly violated citizens' rights to due process, a free and fair trial and freedom from arbitrary detention.

47. Recalling that the Universal Declaration of Human Rights in article 7 had proclaimed the principle of equality before the law and the right to protection of the law without discrimination, while article 8 had proclaimed the right to effective remedy by the competent national tribunals and article 9 the principle that no one should be subjected to arbitrary arrest, detention or exile, her organization urged the Sub-Commission and the international community to press all Governments to comply with international standards for the administration of justice and the protection of the human rights of detainees.

48. Mr. TOTSUKA (International Fellowship of Reconciliation (IFOR)) said that his organization and the Fact Finding Team on the truth about forced Korean labourers fully endorsed the final report of the Special Rapporteur on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms (E/CN.4/Sub.2/1993/8). The report gave great encouragement to the victims, who would never be able to recover from the damage done to them. IFOR also welcomed the comments made by various governments, specialized agencies, international organizations and NGOs on the proposed basic principles and guidelines in the report of the Secretary-General (E/CN.4/Sub.2/1994/7 and Add.1 and E/CN.4/Sub.2/1995/17, Add.1 and 2). The comments in general had been positive except for those of the Japanese Government. It was deeply regrettable that Japan had made comments which were so hostile to the Special Rapporteur's report. It suggested a desire to obstruct progress in improving protection for victims of gross violations of human rights, and was incomprehensible unless one understood how the Japanese Government had dealt with its responsibility for war crimes and crimes against humanity committed during the Second World War.

49. Commenting on the proposed basic principles and guidelines, Japan claimed that no individual victim had a right to reparation under international law. Although Japan had committed serious crimes relating to "comfort women", forced displacements, forced labour, maltreatment of prisoners of war and experiments on living human beings, it had made no effort to provide compensation to the victims for the suffering they had endured. Japan had also claimed that there was no common understanding of what constituted

"crimes under international law" and that the obligation to prosecute and punish perpetrators was not a general obligation of States. According to that view, the Government did not regard the war crimes and crimes against humanity perpetrated by Japanese forces as crimes. War criminals sentenced to death by the International Military Tribunal for the Far East had been deified as war heros at the Yasukuni shrine and cabinet ministers visited the shrine every new year. Under article 11 of the San Francisco Peace Treaty, Japan had accepted all judgements made by the International Military Tribunal and other war crime tribunals. However, Japanese war criminals under international law were treated differently from criminals under Japanese domestic law, and the families of war criminals had received pensions, in contravention of the Public Offices Pension Act and in violation of the San Francisco Peace Treaty. Despite a suggestion from the International Committee of the Red Cross (ICRC) that legislation be enacted to punish war criminals, as Japan was obliged to do under the 1949 Geneva Conventions, no such legislation had been adopted. Furthermore, compensation paid by the Japanese authorities to Japanese war victims had amounted to about US$ 500 billion, while reparations to countries which had suffered Japanese aggression had totalled only US$ 12 billion.

50. Japan had also claimed that the concept of impunity was not clear. IFOR recalled that Japan had never tried a single war criminal.

51. The facts indicated that the Japanese authorities had failed to acknowledge Japan's war crimes and crimes against humanity, and its attitude was reflected in its negative comments on the Special Rapporteur's report. Those comments and criticisms of the proposed basic principles and guidelines served only to emphasize the fairness and significance of the Special Rapporteur's proposals.

52. Mr. ROMAZZOTTI (International Movement ATD Fourth World) said that his organization wished to draw the Sub-Commission's attention to a legal case which raised important questions concerning impunity in respect of violations of the human rights of people living in extreme poverty. The case had been cited in an annex to the report produced by Mr. Despouy (E/CN.4/Sub.2/1995/15). It concerned the Weiss family who in the early 1960s had settled outside a village in France. The family accommodation consisted of a wooden shack and a caravan without wheels. Mr. Weiss worked as a basket maker. He and his wife had 10 children of whom 6 were still at home at the time of the events. For about 15 years, the family had been tolerated by the local people until one day two of the Weiss children were accused of theft. On 13 January 1974, a number of local people accompanied by gendarmes besieged the Weiss family home and the terrified family were forced to leave the area with only a few kitchen utensils and their clothing. The following day, the village mayor had the family's domestic animals slaughtered, their home burned down and the site bulldozed.

53. The Weiss family were forced to drift from one locality to another. Tolerated for only a few days in any one place, they would then be forced to leave and were thus effectively forced into a life of wandering. They were eventually given a caravan but had to move on every 48 hours. Not until May 1977 was the family finally given permanent housing. Only when the Court of Cassation issued a ruling on 26 March 1985 was the mayor found guilty of destroying property and goods belonging to others and damages awarded to the

family. The case, during which various rulings had been given, had lasted 10 years. In view of the family's tragic situation, International Movement ATD Fourth World had decided to take up the case.

54. The Colmar Indictment Division had shown courage in allowing criminal indemnification proceedings to be brought by a poor people's aid association, which was thus authorized to defend their rights. Poverty had not previously carried an entitlement to a particular form of defence, and it would have been easier for the Society for the Protection of Animals to have the mayor charged with killing the family's animals than it was for International Movement ATD Fourth World to initiate proceedings on the family's behalf. The Colmar Indictment Division had rectified that anomalous situation.

55. The Weiss family had been forced to go on the road by local authorities. A person's home helped to define him in terms of his civil rights and obligations. Very poor families were more likely to become victims of abuses since they did not have the means to register a complaint, nor indeed did the idea occur to them to do so. They regarded authorities with suspicion since they had the power to take away their children. For that reason, it was necessary to empower an association to act on their behalf.

56. The case had revealed a great deal about the situation of very poor families seeking justice. In particular, it showed that many people, including public officials certain of their own impunity, would trample on the rights of the very poor who were unlikely to seek redress through the courts. It was also clear that the case would not have been successfully prosecuted had it not been for the fact that an association had been authorized to act as plaintiff. The decision of the Colmar Court had led to the enactment in 1990 of a law allowing such associations to plead in court. That, however, was far from being the case in all countries. It was particularly worrying that the Committee on Economic, Social and Cultural Rights in its deliberations on an additional protocol to the Covenant intended to deny associations the right to take up cases of human rights violations. As a result, very few cases involving violations of the human rights of the very poor would come to its notice. International Movement ATD Fourth World hoped that Mr. Joinet and Mr. Guissé would address such questions in their report on impunity.

57. Ms. GRAF (International League for the Rights and Liberation of Peoples) said that combating impunity was and remained one of the main objectives of her organization, since nothing was more contrary to the ideals of justice and truth. The Vienna Declaration and Programme of Action urged States to revoke laws which offered impunity to persons responsible for grave human rights violations. However, the Government of Peru on 15 June 1995 had enacted an amnesty law which would guarantee impunity for the criminal activities of members of the armed forces and other security services who, during a period of 15 years, had carried out thousands of summary executions, disappearances, acts of torture and massacres such as the one at La Cantuta. As such, the amnesty was an affront to Peruvian society, to the victims and to all humanity.

58. There were those who justified such amnesties by arguing that it provided a mechanism allowing reconciliation and facilitated the transition to democracy. They overlooked the fact that certain things could not be

amnestied. Impunity was no basis for democracy, nor would it lead to reconciliation. In Haiti, as another example, the Government had granted an amnesty to those who had usurped power, although it did not exonerate them of their responsibility for human rights violations committed during the time of the de facto regime. The Haitian Government had set up a Commission on Truth and Justice to investigate crimes against humanity and grave violations of human rights. The decree which established the Commission stated that it would not act as a substitute for the courts, which would be required to judge those responsible for violations.

59. The dearth of administrative measures to combat impunity testified to a lack of political will which then became another factor in perpetuating impunity. Anyone suspected of having committed human rights violations should be automatically suspended from his post by the administrative authorities, pending judicial investigation; were that not done, he would continue to enjoy the prerogatives of his post. Similarly, the executive branch should refrain from granting awards to perpetrators of human rights violations. In Colombia General Velandia Hurtado had recently received the "José Maria Cordova" military award only days after the Office of the Attorney General had ordered his dismissal in connection with the disappearance of a Colombian woman. The worst aspect of the case was the fact that Hurtado had been publicly denounced 13 years previously by the Attorney General as one of the founders and leaders of the paramilitary group Muerte a Secuestradores (MAS).

60. The work done by the Special Rapporteur in drawing up and updating a list of States which had proclaimed, extended or terminated a state of emergency (E/CN.4/Sub.2/1995/20) was not sufficient in itself. It needed to be complemented by work on monitoring and investigating the actual impact of states of emergency on human rights situations. In Bolivia, for example, the Government had declared a state of siege on 18 April, in order to simplify the privatization of various public companies and impose educational reforms fiercely resisted by the trade union movement. Many Bolivian trade unionists had been detained and were being held incommunicado. In some cases, the detainees were confined in remote regions, weakening their position still further. In Colombia, a state of "internal disturbance" had been decreed on 16 August 1995, in continuation of the practice of wrongful recourse to emergency mechanisms for situations which did not warrant them.

61. Another disturbing phenomenon was the appearance of emergency provisions which, although not typical declarations of states of emergency, had the effect of suspending or dangerously restricting certain rights, in effect creating what might be classified as "low intensity states of emergency". An example was the prison and detention emergency law established in 1993 in Colombia.

62. Mrs. WU (Freedom House) said that the full development of human rights depended on fair and equitable administration of justice and the respect of the rights of detainees. Human rights could not be guaranteed without an independent and impartial judiciary and the safeguards provided by due process of law. However, millions of people still languished in prisons because of non-independent judicial systems.

63. She recalled that her own husband, Harry Wu, was both a human rights monitor and a victim of Chinese human rights abuses. For 19 years, he had been a political prisoner, along with millions of others. Today, he was being held again. He had been arrested for daring to reveal the truth about the Laogai - China's gulag - and its many human rights abuses. His history of appearing before the United Nations and other international bodies to speak out on human rights violations in China made it imperative that the Sub-Commission and others seek his immediate release lest others be frightened into silence by his arrest.

64. China's extensive gulag system imprisoned many thousands, maybe millions, who had been denied due process of law. Untold numbers were political prisoners. They included dissidents as well as Catholic priests such as Wang Ruohan and Qin Guoliang and the Protestant preacher Dai Guillang, who were imprisoned for their Christian beliefs. They also included Tong Zeng, Gao Feng and Liu Fengang, who had been harassed or detained earlier during August 1995 in connection with the forthcoming Fourth World Conference on Women to be held in Beijing. The popular motto "verdict first, trial second" captured the reality of the Chinese judicial system, which lacked any semblance of independence. In that system, political trials were closed to the public and defendants might not be allowed to attend their own trials.

65. Another human rights defender, Francisco Chaviano, had been arrested in Cuba in May 1994 and sentenced to 15 years' imprisonment for "revealing State secrets". The so-called State secrets were never shown to the defendant and were nothing more than police reports about thefts at restaurants in 1990. The circumstances of the arrest supported the theory of entrapment by the Cuban authorities. But in a judicial system that lacks any form of due process of independence, it was a case of "verdict first, trial second".

66. The Venerable Thich Quang Do, Secretary-General of the United Buddhist church of Viet Nam, had just been sentenced to five years' imprisonment at a closed trial in Ho Chi Minh City. Five other Buddhists had also been sentenced to between two and five years' imprisonment. Reports had indicated that the six Buddhists had been prohibited from defending themselves or from making any statement during their trial. Freedom House joined with the Viet Nam Committee on Human Rights in calling for a re-trial of the six Buddhists in conditions consistent with international human rights standards, including the right to defence counsel of their own choice and public trial.

67. In November 1989, Teknath Rizal had been abducted from Nepal, where he had been in exile, and held in detention without trial for three years. In 1993, he had been sentenced to life imprisonment under the 1992 National Security Act of Bhutan enacted three years after his arrest. Mr. Rizal's conviction was thus in contravention of the Universal Declaration of Human Rights. Moreover, the judicial system that had rendered the verdict was far from being independent, since the judges were appointed by the King of Bhutan and could be removed by him at any time.

68. The application of international standards concerning the human rights of detained juveniles was an important issue because juveniles were a vulnerable group and needed to receive special consideration. The detention of juveniles ranged from arrest to kidnapping and forcible internment in so-called welfare

centres. That form of detention was prevalent in Sudan, where the Government abducted street children, many of whom Christians or animists, and detained them in camps without any due process. Government claims that it was trying to provide food, shelter and training for vagrant street children had been refuted by the Puebla Institute, which had stated that the camps were "cultural cleansing" centres where the children were forced to take Arabic names, indoctrinated in Islam and forced to undergo military-style training. The camps violated numerous international standards relating to the human rights of detained juveniles.

69. While progress had been made in the promotion of the fair administration of justice and respect for human rights of detainees in the world, the examples she had cited showed that much remained to be done. On behalf of Freedom House, she requested the Sub-Commission to investigate the legal situation surrounding the arbitrary detention of her husband and of the other prisoners and detainees she had mentioned.

70. Mr. ARIF (Afro-Asian People's Solidarity Organization - AAPSO) said that, as reported in the international press, the Government of Pakistan was flagrantly persecuting Mohajirs in the urban centres of Sindh, as well as Christians and Ahmedis. Inhuman exploitation of child labour was also commonly practised. In general, the many Mohajir detainees were being tortured and removed from their areas of residence. According to Amnesty International, the fettering of prisoners was widespread, and the conditions in which most prisoners were kept in security wards were pitiable, worse than those in which animals were kept in zoos. The Mohajir areas of Sindh had been occupied by over six divisions of the Pakistani security forces, which had subjected the Mohajir nation to brutalities, oppression and incarceration. The English-language daily newspaper Dawn of 30 May 1995 had reported the terrible treatment inflicted on four workers of the Mohajir Qoumi Movement.

71. AAPSO feared that violations of the rights of the Mohajir nation in the urban centres of Sindh, including the capital city of Karachi, had far exceeded those of Kashmir and paralleled those of Bosnia and Rwanda. A civil war was simmering. AAPSO therefore requested the United Nations to intervene before it was too late. The international community, including the countries of the Organization of the Islamic Conference, should look into the matter seriously, since the 22 million Mohajirs of urban Sindh were being denied their fundamental and constitutional rights.

72. Ms. RUESTA DE FURTER (International Federation of University Women) observed that in theory the Convention on the Rights of the Child had internationalized the use of a separate system of juvenile courts that had existed in some countries before the Convention had come into force. In practice, however, the situation was not always what was required. In fact, the use of the word "child" rather than the word "minor" in the title of the Convention might have given some people the impression that a special jurisdiction for minors was not needed. However, the very success of the Convention ought to make them change their minds. Articles 37, 39 and 40 should be implemented with great professionalism. It would be greatly appreciated if a member of the Sub-Commission, which had made so much progress in the matter, could display a special interest in the topic. The International Federation of University Women supported the idea put forward by

the Committee on the Rights of the Child that a meeting of experts should be held at the end of 1995, to be attended by experienced juvenile court magistrates from all parts of the world.

73. Mr. OZDEN (Centre Europe-Tiers Monde (CETIM)) recalled that his organization had denounced the massive and flagrant violations of human rights in Turkey on many occasions. The situation was deteriorating every day and the Government's promises had remained dead letters. Despite the circular sent by the Prime Minister to the Minister of the Interior requesting that equipment used for torture should be removed from police stations, torture was still systematically practised. In 1994 the Turkish Human Rights Association had recorded more than 1,000 allegations of torture, most of them backed by a medical certificate. The Turkish Human Rights Foundation had also recorded 313 complaints of torture during the first six months of 1995. Moreover, despite the "systematic" denials of the authorities, men and women were continuing to die while being held in custody.

74. Freedom of expression and opinion was flouted every day in Turkey. On 16 June 1995 the prosecutor of the Istanbul State Security Court had charged 99 of the 1,080 intellectuals who had declared themselves to be co-authors of the book "Freedom of expression in Turkey" in order to support Yasar Kemal and Erdal Oz, the publishers of the book. Moreover, around 50,000 persons had signed a petition in support. The prosecutor had requested at least four years' imprisonment for each of the 99 intellectuals.

75. CETIM was pleased that the Special Rapporteur on the promotion and protection of the right to freedom of expression and opinion would be able to visit Turkey soon. But what did that mean when the Special Rapporteur on extrajudicial, summary or arbitrary executions had on several occasions requested permission to visit Turkey? Was it the effect of a draft resolution?

76. The situation in prisons was still a source of great concern. In particular, health problems seemed to be totally neglected by the authorities. Another noteworthy feature of prison life was the series of hunger strikes organized by prisoners with a view to obtaining better conditions, protesting against repression, or supporting the frequent hunger strikes begun in other prisons. On 14 July 1995 a hunger strike had been begun by 10,000 Kurdish political prisoners, supported by persons close to them in Turkey, Europe, including Geneva, and North America. Three persons had already lost their lives.

77. The recent amendments to the Constitution would not improve the current situation in Turkey, since they did not go to the bottom of the problems. For example, no amendments had been made to articles 13 and 14, which limited fundamental rights and freedoms, or to articles 26, 27 and 28, which paralysed freedom of expression and opinion as well as freedom of the press. More important still, the extensive powers attributed to the army through the National Security Council had not been in any way amended. All important decisions, including those connected with the Kurdish question, were taken by the National Security Council.

78. United Nations human rights bodies should be regularly informed of the situation in Turkey. CETIM therefore requested that the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the question of torture should be able to visit Turkey, that the Special Rapporteur on the promotion and protection of the right to freedom of expression and opinion should be able to complete his mandate and that the Turkish authorities should help him and respect his inquiry.

79. Mr. EIDE drew the Sub-Commission's attention to what he considered to be a disturbing case in Saudi Arabia, where certain persons had been or were due to be beheaded for smuggling a prescription drug. The authorities maintained that a serious offence had been committed under Sharia law, but Islamists elsewhere asserted that the penalty had no justification in Sharia law. In any case, the sentences were in stark conflict with human rights law, and he hoped that they would not be carried out.

80. He noted that Mr. Joinet's progress report on the question of the impunity of perpetrators of violations of civil and political rights (E/CN.4/Sub.2/1995/18) was well under way. As far as paragraph 6 was concerned, he considered that account should also be taken of violations committed by non-State groups, although responsibility for bringing perpetrators to justice lay primarily with States, the non-State groups concerned having a moral obligation. When a member of the non-State group who had committed a crime fled to another country, the Government of his new State of residence should have an obligation to punish him; otherwise it would be contributing to impunity.

81. United Nations mechanisms should certainly take account of impunity as an important indicator of State responsibility for human rights violations. Military courts, if they could not be abolished, should deal only with cases involving internal military discipline. Also, their jurisdiction should cover only international wars, not violations committed when security forces were combating internal unrest. The principle of due obedience should be invoked only as a mitigating circumstance and not as exoneration from criminal responsibility. In applying it as a mitigating circumstance, account should be taken of the moral choice facing the accused at the time when the violation was committed.

82. Mr. Guissé's interim report on opposition to the impunity of perpetrators of violations of economic, social and cultural rights (E/CN.4/Sub.2/1995/19) brought up many issues needing close examination. Like Mr. Yimer, he had a problem regarding the definition of impunity. It was important that there should be no retroactivity in any punishment inflicted. In any case, the subject fell more naturally under agenda items 7 and 8 than under agenda item 10, a large part of it being concerned with the implementation of obligations under the Charter of the United Nations and other instruments. It would certainly be very useful for the discussion of the moral, political and legal aspects of the duty of all States to create conditions in which all rights, including economic and social rights, could be enjoyed by everyone in all parts of the world. In continuing his study, the Special Rapporteur should take account of the work done by the Working Group on the Right to Development, the studies already made on the rights to housing and to food, and the work of the Committee on Economic, Social and Cultural Rights.

83. Mrs. CHAVEZ congratulated the Special Rapporteurs on their excellent reports. Item 10 was undoubtedly one of the most important items on the Sub-Commission's agenda. Just as the rule of law was the foundation on which democracy was built, so too the fair and impartial administration of justice was the most critical element in maintaining respect for the rule of law. Arbitrary or capricious application of the law to punish individuals for their beliefs or to persecute unpopular or minority groups undermined respect for the rule of law and was ultimately inconsistent with true democracy. Unfortunately, abuses in the administration of justice were still widespread.

84. She wished to speak about her concerns in that area in respect of certain countries and some specific cases. Failure to mention any specific country or individual case should not be interpreted as indifference on her part. The constraints imposed by the Sub-Commission's time-limits necessarily required that her list should be short, even though the list of actual abuses was depressingly long.

85. The first case involved a man who was not only a citizen of her own country but also a brave and tireless fighter for human rights. He had already testified before the Sub-Commission in 1993. As a young student he had publicly protested against the brutal crushing of the democratic revolution in Hungary by Soviet tanks in 1956 and had become an outspoken critic of totalitarianism in his own country. His refusal to bend his own individual beliefs to the will of the ruling Communist Party had branded him as an enemy of the State, which had ultimately imprisoned him within days of his graduation from university. For 19 long years the State had tried to break his will. He had been forced to undergo "education through labour" a form of forced labour imposed on those whom the State wished to punish for exercising their human rights. After his release, he had gone to the United States of America, not to retire to the quiet academic life that had awaited him at Stamford University but to continue his fight for human rights by exposing the grave violations of those rights in the country of his birth. So he had left the security and freedom of Palo Alto in California to return to his native land and to the very prison system where thousands of prisoners of conscience like himself had been detained without the benefit of fair trials and forced to perform labour that profited their oppressors. Three times he had gone back to secretly film the prisoners and their tormentors, each time risking his own life. On the fourth trip, on 19 June 1995, he had been seized at the border and remained in jail, charged with espionage for having exposed the system of forced labour in his native land. That man was Harry Wu, and the country that had stolen Harry Wu's youth and now threatened to take away his very life was the People's Republic of China. Let those who would be going to Beijing next month for the Fourth World Conference on Women remember Harry Wu and all the other Harry Wus in China.

86. She was taking up the case of the human rights of detainees and the administration of justice in China first not only because of her respect for Mr. Harry Wu but because the People's Republic of China was the world's most populous country, and one of its most powerful and important. However, there were many other nations which routinely denied justice to their own people and violated prisoners' rights. Prisoners of conscience were still to be found in Cuba, India, Indonesia, the Islamic Republic of Iran, Iraq, the Libyan Arab Jamahiriya, the Syrian Arab Republic, Viet Nam, Yemen and other countries.

Yet there had been some positive developments in 1995. For example, in Turkey the Prime Minister had publicly committed herself to amending the Turkish Anti-Terrorism Law under which many journalists, academics and intellectuals had been prosecuted. In the Republic of Korea, the Government had granted an amnesty to more than 3,000 prisoners. In the Democratic People's Republic of Korea, Amnesty International had been allowed to visit one prison and had been given information on some individual prisoners of conscience. The Government of the Democratic People's Republic of Korea should be encouraged to take more such actions, particularly in view of its concern that allegations against it were the result of political propaganda. The best defence against misinformation was openness and freedom of access.

87. It was not surprising that many Governments which trampled on justice and the rights of detainees also discriminated against, and indeed persecuted, persons for their religious beliefs. In Iran, for example, the rights of Bahai's and other religious groups were routinely violated and Islam, one of the world's great religions, was being perverted as an instrument to persecute women and others. In Sudan, Christians and animists were the casualties of a brutal campaign of repression. Freedom of belief and freedom to practise one's beliefs remained dangerous in all too many places in the world.

88. Since she would not be returning to the Sub-Commission in 1996, she would not be present to review whether the threats to the freedoms and human rights covered by agenda items 10 and 12 would have diminished over the next 12 months. However, she was confident that her colleagues would remain vigilant in their monitoring and outspoken in their condemnation when abuses occurred.

89. Mr. Hakim took the Chair.

90. Ms. LITTLE (Andean Commission of Jurists) said that the countries of the Andean region had been pursuing a number of programmes designed to modernize their judicial systems with a view to overcoming such problems as difficulties in access to justice, delayed trials and excessive costs. Other proposals designed to provide greater legal protection for human rights related to the development of proper training for judges, the introduction of computerization in the judicial process and the establishment of new courts.

91. Problems however remained, including the corruption of judges and others involved in the judicial process as well as other prejudicial conduct which showed little respect for human rights. There were very few cases where violations of human rights had been properly investigated and those responsible adequately punished.

92. In certain countries the relative impunity of the armed forces and their interference in many areas of social and political life were reflected in the growing role of military justice in the judicial order. In Colombia and Peru the role of military justice had become an issue of serious debate. In other countries, military justice had varying degrees of influence in areas concerned with human rights. The absence of a proper prison policy together with the virtual abandonment of prisoners had led to explosive situations in the region. Mutinies and rebellions were taking place and no attention was paid to the principles of treatment for persons deprived of their liberty

approved by the United Nations. More than 100,000 human beings were in penal establishments in the countries of the region, 60 per cent of whom had never been sentenced but remained in preventive detention which in some cases had lasted for years. In Bolivia, Peru and Ecuador the number of unsentenced prisoners was alarming, with more than 75 per cent of prisoners never having been tried. The independence of the judiciary and the autonomy of judges had been compromised in Chile, Colombia and Peru.

93. In Chile, the autonomy of judges had been strengthened by developments in the Letelier case where civilian judges had sentenced two high-ranking army officers to jail sentences for the assassination of the Foreign Minister of the previous socialist regime. Nevertheless one of those sentenced, General Manuel Contreras, was still in a naval hospital and it had not been possible to implement his sentence.

94. In Colombia, the current system of military justice had been questioned by the Constitutional Court which had declared it to be incompatible with the system required by the Code of Military Justice according to which military judges were officers on active service. Parliament had approved a constitutional reform in order to permit officers on active duty to occupy those posts. On the other hand, a few days earlier the Colombian Government had decreed a state of emergency and had restricted a number of fundamental rights.

95. In Peru, it was a matter for regret that the few cases which had been submitted for judicial investigation had been terminated as a result of the recent legislation on amnesty which was contrary to international instruments and to the recommendations of the thematic mechanisms of the United Nations, including the Sub-Commission. That problem had been addressed in a communication to the Government of Peru by three rapporteurs and the chairman of a working group of the Commission on Human Rights.

96. Ms. De VLAMING (World University Service) said that her organization considered that, given the many continuing cases of impunity, the Sub-Commission and other human rights bodies of the United Nations were proceeding at a very slow pace in confronting such a widespread and extremely dangerous practice.

97. The human rights community had been shocked by the speedy passage given to Act No. 26479 by the Congress and Government of Peru. That law had granted general amnesty for acts of terrorism committed individually or with other people since May 1980. It granted favourable treatment to military officers, police and even civilians for actions which the Act itself qualified as "common and military crimes". It was evident that the purpose of Act No. 26479 had been to free from the threat of prosecution and punishment high-ranking officials of the Government, military officers and others responsible for serious violations of human rights.

98. According to Peruvian and international human rights organizations, on the day following the enactment of Act. No. 26479, the Supreme Council of Military Justice had freed the people who had benefited from the amnesty, including those already sentenced for the assassination of one professor and nine students perpetrated by the armed forces at La Cantuta University in

July 1992. Moreover, Act No. 26479 had been promulgated when the judiciary was investigating the executions of 16 people, including a 10-year-old boy, in Lima, by members of the Army Intelligence Branch, a crime that allegedly involved the President of Peru himself. World University Service supported the draft resolution against Act No. 26479 proposed by Mr. Joinet.

99. Impunity remained the most serious obstacle to the enjoyment of human rights in Guatemala. In one case, Mr. Efran Bamaca Velazquez, husband of a United States lawyer, Ms. Jennifer Harbury, had been captured in combat, tortured for months in clandestine military jails and supposedly killed. Thanks to recent information made available by United States Congressman Robert Torricelli, it had become known that the United States Department of State and the CIA had information that, on the orders of Guatemalan Colonel Julio Alpirez, an employee of the CIA at the time, Mr. Bamaca had been tortured and assassinated. The subsequent investigation had encountered all sorts of obstacles: the original prosecutor in charge of the case had been dismissed; the prosecutor who replaced him had been accused by the army of having links to a guerrilla organization and later received death threats against himself and his family and finally, under heavy pressure, resigned his position. Despite a court order to proceed to the exhumation of bodies in the military base "La Montanita", in San Marcos, where the State Department had told Ms. Harbury that her husband's body had been buried, the army had impeded any work or presence within the base installations. Ms. Harbury, had decided to camp in front of the military base as a form of protest but had been harassed by mobs led by civil patrols and army officers. In another recent case Manuel Saquic Vasquez, a Presbyterian pastor and a member of a Maya defence organization had disappeared on 23 June 1995 and his tortured and dead body had been found in early July; paramilitary organizations in Chimaltenango had been blamed for his abduction and killing. Subsequently death threats had been addressed to the Rev. Vitalino Similox, and his wife and to the pastor, Lucio Martinez Pic.

100. Her organization believed that the examples of Peru and Guatemala should be taken fully into account by Mr. Joinet in preparing his final report.

101. Although the international community was beginning to address the issue of massive violations of human rights in the former Yugoslavia and in Rwanda, it was not addressing the issue of similar violations in so-called democracies where States had declared that official repressive policies did not exist.

102. The truth commissions were an essential first step for the proper investigation of violations of human rights perpetrated by State agents, but they should not lead to amnesty laws or pardons, because justice was then hindered and the valuable work of finding the truth obscured by the fact that a blanket of impunity would cover all the crimes discovered.

103. Furthermore, her organization firmly believed that military and other courts of special jurisdiction should not exist; any crime should be in the hands of the civilian courts. The military might have its own disciplinary system to deal with internal violations of its rules, but such a system could not be a substitute for equality before the law for all citizens of a given country.

104. Her organization welcomed the fact that the Sub-Commission was making progress in analysing the phenomenon of impunity but wished to reiterate its concern at the slowness of its pace.

105. Ms. VALIÑA (Latin American Federation of Associations of Relatives of Disappeared Detainees) said her organization wished to comment on Mr. Joinet's report (E/CN.4/Sub.2/1995/18) in the hope that its views would make a worthwhile contribution to his final report due in 1996.

106. Impunity in itself represented a violation of human rights quite apart from the crimes which were at its origin. In paragraph 5 of his report, Mr. Joinet had avoided a definition of impunity in legal terms. Nevertheless, some kind of definition was desirable. Her organization considered that the obligations of the State included: investigation of the acts constituting a violation of human rights; bringing to trial those responsible for the violation; punishment of those responsible; and compensation for victims, whether individuals or groups. When a State, in a situation of a violation of human rights, failed to comply with any of these obligations, it was itself committing the violation of impunity.

107. In answer to the point raised in paragraph 6 of the report, her organization believed that the scope of the study should be limited only to State violations as it was the only entity capable of committing such violations. It therefore rejected completely the concept of relative impunity mentioned in paragraphs 11 and 12. Either there was impunity or there was not impunity; it was neither absolute nor relative; what was involved was non-fulfilment of its obligations by the State.

108. Concerning the commissions of inquiry mentioned in paragraph 16, she wished to reiterate the position of her organization to the effect that such commissions could in no circumstances replace the competence of jurisdictional organs. Commissions of inquiry could be very useful instruments in bringing out the truth but they could not take the place of the organs of the judicial power in the process of justice. That point should be made completely clear in the final report.

109. On the role of amnesty, referred to in paragraph 19, her organization wished to reiterate its rejection of the admissibility of amnesty in situations of serious violations of human rights. Amnesty and other similar forms of impunity had not proved to be instruments of conciliation and the process moreover had almost always excluded the victims from the negotiations. It could hardly be argued that the recent Peruvian amnesty law would permit the conciliation of Peruvians. On the contrary, its effect would be to prevent any knowledge leaking out on what had happened to disappeared persons and those who had been executed in Peru with the result that, in the end, the violations would be covered by impunity.

110. Another form of impunity involved the principle of due obedience which was referred to in paragraph 18 in connection with mitigating circumstances. In that connection she referred to a statement made on 25 April 1995 by General Martín Balza, Chief of the General Staff of the Argentine Army in which he had categorically denounced that doctrine in cases involving an immoral order or one which contravened military law or regulations.

111. Mr. KOTHARI (Habitat International Coalition) welcomed the interim report of Mr. Guissé (E/CN.4/Sub.2/1995/19) and, in particular, his references in paragraph 98 to forced evictions as a consequence of violations of the right to housing and his recognition, in paragraph 108, of rural populations as a group particularly vulnerable to violations of economic, social and cultural rights.

112. In the rural areas of Brazil, about 4.8 million families were deprived of land to cultivate. According to official statistics, 1.9 per cent of the rural landowners controlled 55.2 per cent of the total Brazilian land registered. Over the past 30 years the situation had deteriorated substantially. The percentage of rural lands with less than 100 hectares had declined from 20.4 per cent in 1966 to 15.4 per cent in 1992, while the percentage of rural lands with areas greater than 1,000 hectares had increased from 45.1 per cent in 1966 to 55.2 per cent in 1992.

113. The lack of political will on the part of the Brazilian Government to implement agrarian reform had drastically modified the country's demographic structure, intensifying the process of urban concentration. Currently only one State, namely Maranhao, had a higher rural than urban population. Appalling living conditions, alarming levels of violence and social tension in the favelas was a direct result of the process. The process of land concentration in rural areas had been characterized by violent evictions of small farmers and indigenous peoples from their ancestral lands. In the past 15 years, in the two northern States of Maranhao and Para alone, more than 1,200 rural workers had been killed in land conflicts. A great part of those lands were the so-called "terras de preto" (black people's lands) which had been either given to or acquired by former slaves.

114. According to article 68 of the Brazilian Constitution adopted in 1988, the people living on the "terras de preto" were to be granted legal tenure. Seven years later not one such property had been legally recognized.

115. In the area of Porto da Folha, in the State of Sergipe, 150 families belonging to the rural black community of Mocambo had seen their plantations destroyed in 1992 by the alleged owners' hired men. Soon after that the families had been forcibly evicted. In the area of Oriximina, in the State of Para, the descendants of the ancient "quilombos" of Rio Teombetas had seen their right to their ancestral lands constantly threatened since 1979 when a mineral company had been set up. Currently more than 2,000 families were threatened with forced eviction and in the meantime faced constant threats and harassment.

116. Habitat International Coalition urged the Brazilian Government to implement article 68 of the Brazilian constitutional dispositions immediately by granting legal tenure to the communities settled in the "terras de preto" and to investigate thoroughly those responsible for the murders of rural workers and other violence that had occurred during the course of the land conflicts.

117. In conclusion, he would like to urge the Sub-Commission to pursue the study on impunity and to place appropriate emphasis on the issues of land reform, rural land concentration and the political will necessary for the fulfilment of two of the principal economic, social and cultural rights, namely, food and housing.

118. Ms. TANAKA (International Movement against All Forms of Discrimination and Racism) said that her organization had been informed that Mr. Teknath Rizal, prisoner of conscience of Amnesty International, continued to be detained in Chamgang jail in Bhutan along with hundreds of other political prisoners, who had been detained without trial for a number of years. Her organization had been particularly concerned with the decision to view the arrest, detention and trial of Mr. Teknath Rizal as lawful and not arbitrary. In that connection, it wished to draw attention to the fact that Mr. Rizal's arrest in Nepal in 1989 had not followed the provisions laid down in Nepal's Extradition Act 2020 (1963) which stipulated that due process in Nepalese courts must precede the act of extradition and that the same Act also provided that, if the nature of the crime or charge was of a political nature, such accused or offender should neither be extradited or any proceedings to punish him initiated. From the time of his arrest until December 1992, Mr. Rizal had been kept in shackles, incommunicado and in solitary confinement. He had been tried in 1993 on charges based upon the National Security Act, adopted in November 1992.

119. Her organization accordingly hoped that the Sub-Commission as well as the Working Group on Arbitrary Detention would seek to have Mr. Teknath Rizal released together with the other political prisoners.

120. Her organization was also deeply concerned by grave inconsistencies in the administration of justice and protection of the human rights of detainees in Viet Nam as illustrated in the trial, on 15 August 1995, of Venerable Thich Quang Do and five prominent monks and laypersons belonging to the United Buddhist Church of Viet Nam. According to information from the Viet Nam Committee on Human Rights, the proceedings at the trial and the conditions of the defendants' arrest and pre-trial detention had breached all internationally recognized human rights standards.

121. Thich Quang Do, the second highest dignitary of the United Buddhist Church, had been arrested on 4 January 1995 on charges of implication in violation of public order after he had protested against a Government clampdown on a Buddhist humanitarian mission to bring relief aid to the victims of flooding in Viet Nam. The Criminal Procedures Code of Viet Nam limited pre-trial detention to four months which could only be extended for crimes of particular danger to national security; nevertheless the accused had been detained for seven to nine months without trial. Thich Quang Do had not been allowed to receive any visits and his family had never been told where he was detained. None of the accused had been granted access to defence counsel of their own choice. Three defence lawyers from the Paris-based International Federation of Leagues for Human Rights had been repeatedly refused visas by the Vietnamese authorities.

122. The arbitrary detention and trial of those Buddhist monks was a clear violation of the principles laid down in article 14 of the International Covenant on Civil and Political Rights to which Viet Nam was a party.

123. Her organization called on the Vietnamese Government to release the six Buddhists immediately and unconditionally. If further trials were held, the Vietnamese Government must ensure that they conformed with international standards of fairness and impartiality.

124. Mr. ANDREEVSKA (Observer for the former Yugoslav Republic of Macedonia) said that detention was one of the forms of deprivation of freedom that society considered to be a necessary evil. The European Convention on the Protection of Human Rights and Freedoms had a special place among the various important international instruments dealing with detention in that it defined detention as a permissible form of freedom deprivation which was justified by reasonable doubt that the person had committed a crime while taking into account the need to prevent the person from committing a crime or from escaping after an offence had been committed. The establishment and implementation of the European Convention on the Protection of Human Rights and Freedoms represented an important turning point for the international system of human rights protection. The Convention, in contrast to the Covenant on Civil and Political Rights and to the Inter-American Convention, endeavoured to define detention more precisely. In her view, it was important that detention should be treated as an exception to the fundamental, inviolable right to freedom. The fact that most States parties to the Convention did not have accusatorial criminal proceedings resulted not only in doctrinal differences in the implementation of detention, but also in different legal solutions that led to shifts in the interpretation and implementation of the Convention.

125. Her own country was currently engaged in adopting a new Criminal Code and a new Criminal Procedure Code. The Criminal Procedure Code also regulated the issue of proceedings, the conditions and manner of determining detention, the responsible authorities and the duration of detention. According to current law, the court was the only responsible body, under conditions determined by the law, to determine detention which, in accordance with the Constitution, should not exceed 90 days.

126. Although her country had not yet become a party to the European Convention on Human Rights, the draft Criminal Procedure Code incorporated the human rights standards set forth in the international treaties, as a necessary precondition for its greatly desired full integration into Europe. It also paid special attention to the observance of standards relating to the right to freedom and to the manner of regulating detention as a measure that limited that right.

Statement equivalent to the exercise of the right of reply

127. Mr. PANG Sen (Observer for the People's Republic of China) said that certain non-governmental organizations and one member of the Sub-Commission had criticized the Chinese judicial system without any grounds for so doing. Reference had been made to the case of Wu Hung Da. His delegation had already

commented on that case but nevertheless certain individuals had deliberately tried to distort the facts. He had therefore been obliged once again to state the true facts and dispose of the lie.

128. One expert had referred to Wu Hung Da as a courageous young man, a prisoner of conscience, who had risked his life while trying to save the lives of others. He had been described as a hero. That comment must be compared with the confession made by Wu himself when he had admitted that, in order to vilify China, he had gone to China and claimed that certain products on the market were products made in labour camps. He had visited a hospital where he had filmed an operation for a heart condition and claimed that the case was a kidney transplant operation involving prisoners. He had entered China under assumed names on many occasions and had even worn a Chinese policeman's uniform and visited areas which were off-limits to foreigners, in order to collect intelligence for his masters. Such a person lacked basic morality. The expert had referred to Wu as a prisoner of conscience but he would like to know what being a prisoner of conscience really meant. If the United States was ready to tolerate and to abet evil in its own territory, that was a matter for the United States alone and no other country or people could interfere. If, however, Wu was arrested in China, he was subject to prosecution in China. He could not simply do whatever he wanted with an American passport and American funding. That approach was no longer tolerated. In history there had been cases when United States navy personnel had raped Chinese students; the sailors had enjoyed so-called extraterritorial jurisdiction and had been set free. The present however was different from the past. Any pressure or intervention in the domestic affairs of China would not be tolerated.

The meeting rose at 1 p.m.